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U.S. Department of Homeland Security

Bureau of Citizenship and Immigration Services

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Administrative Appeals Office  
425 Eye Street N.W.  
ULLB, 3rd Floor  
Washington, D.C. 20536

MAR 12 2003

File: WAC 03 015 55027

Office: CALIFORNIA SERVICE CENTER Date:

IN RE: Petitioner:  
Beneficiary:

Petition: Petition for Nonimmigrant Worker Pursuant to Section 101(a)(15)(O)(i) of the Immigration and Nationality Act, 8 U.S.C. § 1101(a)(15)(O)(i)

ON BEHALF OF PETITIONER:

**Identifying data deleted to  
prevent clearly unwarranted  
invasion of personal privacy**


INSTRUCTIONS:

This is the decision in your case. All documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.

If you believe the law was inappropriately applied or the analysis used in reaching the decision was inconsistent with the information provided or with precedent decisions, you may file a motion to reconsider. Such a motion must state the reasons for reconsideration and be supported by any pertinent precedent decisions. Any motion to reconsider must be filed within 30 days of the decision that the motion seeks to reconsider, as required under 8 CFR § 103.5(a)(1)(i).

If you have new or additional information that you wish to have considered, you may file a motion to reopen. Such a motion must state the new facts to be proved at the reopened proceeding and be supported by affidavits or other documentary evidence. Any motion to reopen must be filed within 30 days of the decision that the motion seeks to reopen, except that failure to file before this period expires may be excused in the discretion of the Bureau of Citizenship and Immigration Services (Bureau) where it is demonstrated that the delay was reasonable and beyond the control of the applicant or petitioner. *Id.*

Any motion must be filed with the office that originally decided your case along with a fee of \$110 as required under 8 CFR § 103.7.

  
Robert P. Wiemann, Director  
Administrative Appeals Office

**DISCUSSION:** The nonimmigrant visa petition was denied by the Director, California Service Center and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The petitioner is a talent management firm that seeks to employ the beneficiary as an actor for a period of three years. The petitioner is the beneficiary's agent. The director determined that the petitioner had not established that the beneficiary qualifies as an alien who has a demonstrated record of extraordinary achievement in motion picture and/or television productions.

On appeal, counsel for the petitioner argues that the beneficiary is qualified for the classification sought.

Section 101(a)(15)(O)(i) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1101(a)(15)(O)(i), provides classification to a qualified alien who has extraordinary ability in the sciences, arts, education, business, or athletics which has been demonstrated by sustained national or international acclaim or, with regard to motion picture and television productions, has a demonstrated record of extraordinary achievement, and whose achievements have been recognized in the field through extensive documentation, and seeks to enter the United States to continue work in the area of extraordinary ability.

Under 8 C.F.R. § 214.2(o)(3)(v), in order to qualify as an alien of extraordinary achievement in the motion picture or television industry, the alien must be recognized as having a demonstrated record of extraordinary achievement as evidenced by the following:

(A) Evidence that the alien has been nominated for, or has been the recipient of, significant national or international awards or prizes in the particular field such as an Academy Award, an Emmy, a Grammy, or a Director's Guild Award; or

(B) At least three of the following forms of documentation:

(1) Evidence that the alien has performed and will perform services as a lead or starring participant in productions or events which have a distinguished reputation as evidenced by critical reviews, advertisements, publicity releases, publications contracts, or endorsements;

(2) Evidence that the alien has achieved national or international recognition for achievements evidenced by critical reviews or other published materials by or about the individual in major newspapers, trade journals, magazines, or other publications;

(3) Evidence that the alien has performed, and will perform in a lead, starring, or critical role for organizations and establishments that have a distinguished reputation evidenced by articles in newspapers, trade journals, publications, or testimonials;

(4) Evidence that the alien has a record of major commercial or critically acclaimed successes as evidenced by such indicators as title, rating, standing in the field, box office receipts, motion picture or television ratings, and other occupational achievements reported in trade journals, major newspapers, or other publications;

(5) Evidence that the alien has received significant recognition for achievements from organizations, critics, governmental agencies, or other recognized experts in the field in which the alien is engaged. Such testimonials must be in a form which clearly indicates the author's authority, expertise, and knowledge of the alien's achievements; or

(6) Evidence that the alien has either commanded a high salary or will command a high salary or other substantial remuneration for services in relation to others in the field, as evidenced by contracts or other reliable evidence.

The beneficiary is an actor who has worked in Australia, Japan and the United States in the television, theatre and film industry.<sup>1</sup> She received dramatic training at the Atlantic Theatre Company (New York). As a youth, the beneficiary acted in theatre and commercials. The beneficiary performed in two prime time television programs, *Agro's Cartoon Adventure* (1994-1997) and *The Great Outdoors* (1998-2000), that won multiple Logies Awards.<sup>2</sup> She played a supporting role in an Australian television series titled *Paradise Beach* in 1993. She acted in films including *The Mentor*, *Closing Time*, *Pregnant Possibilities* and in live theater productions such as *Jewel of the Orient Express* and *Crook Peanuts*. The beneficiary has acted in Australian television commercials. She last entered the United States on January 15, 2002 as a nonimmigrant media representative.

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<sup>1</sup> The petitioner states that the beneficiary's film career began in 2001 but indicates that the beneficiary performed in the film *Enigma* in 1992.

<sup>2</sup> The petitioner asserts that Australian Logie Awards are equivalent to American Emmy Awards. The petitioner provided corroborating evidence that the Logie is prestigious and considered to be equivalent to the American Emmy.

While two of the shows the beneficiary co-hosted received national awards, she has neither been nominated for, nor has she been the recipient of, any significant national or international awards or prizes in her field of endeavor.

*Evidence that the alien has performed, and will perform, services as a lead or starring participant in productions or events which have a distinguished reputation as evidenced by critical reviews, advertisements, publicity releases, publications contracts, or endorsements.*

For criterion number one, counsel for the petitioner asserts that the beneficiary has "played a leading role for some of the most prestigious entities in the world and has performed critical roles in the most distinguished of productions." Counsel for the petitioner asserts that the testimonials it provided to the Bureau satisfy this criterion. Counsel's assertions are not persuasive. The petitioner has not established that the beneficiary will perform leading role(s) in productions with a distinguished reputation in the U.S., as evidenced by critical reviews, advertisements, publicity releases, publications contracts or endorsements. The petitioner has not demonstrated that the beneficiary meets this criterion.

*Evidence that the alien has achieved national or international recognition for achievements evidenced by critical reviews or other published materials by or about the individual in major newspapers, trade journals, magazines, or other publications.*

For criterion number two, the petitioner submitted articles published in newspapers and magazines about the alien and two of her television programs. It is clear from the articles that the beneficiary enjoys fame in her home country. The beneficiary satisfies this criterion.

*Evidence that the alien has performed, and will perform, services as a lead, starring, or critical participant in productions or events which have a distinguished reputation as evidenced by articles in newspapers, trade journals, publications, or testimonials.*

The petitioner provided the Bureau with testimonials and articles published in newspapers and publications indicating that the beneficiary has performed services as a lead or critical participant in productions that have a distinguished reputation, i.e., the two award winning television programs mentioned above. The petitioner failed to establish that the beneficiary will perform services in productions that have a distinguished reputation. The petitioner states that the beneficiary will perform as a lead in several movie and television productions.

The petitioner indicates that the beneficiary will perform in several theater productions staged by the California Repertory Company in, as of yet, undetermined roles. The contracts for these events indicate that she will be earning modest compensation for her work. The petitioner failed to establish that any of these roles will be for productions or events with a distinguished reputation.

*Evidence that the alien has a record of major commercial or critically acclaimed successes as evidenced by such indicators as title, rating, standing in the field, box office receipts, motion picture or television ratings, and other occupational achievements reported in trade journals, major newspapers, or other publications.*

The petitioner provided evidence that the beneficiary performed in two television program series that have a record of critically acclaimed success. The beneficiary performed in *Agro's Cartoon Connection* and *The Great Outdoors*, two prime time programs that won numerous Logie awards. The beneficiary satisfies this criterion.

*Evidence that the alien has received significant recognition for achievements from organizations, critics, government agencies, or other recognized experts in the field in which the alien is engaged. Such testimonials must be in a form which clearly indicates the author's authority, expertise, and knowledge of the alien's achievements.*

The petitioner provided the Bureau with testimonials written by two of the beneficiary's acting instructors, and by [REDACTED] the film commissioner for the Australian consulate in Los Angeles, California, [REDACTED] of the Australian Broadcasting Corporation, [REDACTED] an executive with Southern Star Entertainment, an Australian television production and distribution company, [REDACTED] an actor and director associated with Studio Net Australia, [REDACTED] of Warner Bros. (Australia) [REDACTED] of the [REDACTED] Agency (the beneficiary's U.S. agent), [REDACTED] the beneficiary's former manager, [REDACTED] United International Pictures, [REDACTED] of Creative Management Group (the petitioner and the beneficiary's manager), [REDACTED] former managing director of [REDACTED] and [REDACTED] and [REDACTED] of the Seven Network in Australia (former employer of the beneficiary). The testimonials' authors state that the beneficiary's acting work on stage and in television has been "exceptional," and "award winning," and that the beneficiary is "well known in Australia," possessing "extraordinary talent." The testimonials show that she has received some fame as a successful co-host of two award winning shows; however, the record does not reflect an extraordinary achievement in film or television. While

all of the testimonials' authors sing praise for the beneficiary's talent, the evidence is insufficient to establish that the beneficiary has a demonstrated record of extraordinary achievement.

*Evidence that the alien has either commanded a high salary or will command a high salary or other substantial remuneration for services in relation to others in the field, as evidenced by contracts or other reliable evidence.*

The record contains no evidence that the beneficiary has commanded a high salary. In the absence of wage surveys, the Bureau cannot evaluate whether the proffered rate of pay is high in relation to that received by others equally qualified.

After a careful review of the entire record, it is concluded that the petitioner has not shown that the beneficiary is a person of extraordinary achievement in the motion picture or television industry.

Beyond the decision of the director, the petitioner failed to provide a consultation from the appropriate peer group as is required by 8 C.F.R. § 214.2(o)(5). The appropriate peer group in this case is the Screen Actors Guild. Since the appeal will be dismissed for the reasons stated above, this issue need not be examined further.

The burden of proof in these proceedings rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. The petitioner has not sustained that burden. Accordingly, the appeal will be dismissed.

**ORDER:** The appeal is dismissed.